

Idaho Public Utilities Commission

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States' utility group expresses disappointment in FERC action

The National Association of Regulatory Utility Commissioners (NARUC) today criticized a decision by a federal agency to sue the Idaho Public Utilities Commission over a matter already being litigated in the state Supreme Court.

"We are deeply disappointed in the Federal Energy Regulatory Commission's action in this case. It is not at all clear why FERC would take this drastic and unprecedented step at this time," said NARUC President Philip Jones, also a commissioner in Washington state.

NARUC is responding to a decision by FERC to pursue a federal court case over the Idaho commission's denial of power purchase agreements between Idaho Power Company and the developers of the Grouse Creek and Murphy Flats wind projects.

The Grouse Creek case is scheduled for argument in August before the Idaho Supreme Court. The Murphy Flats project owners did not seek relief from the Idaho Commission's order denying the sales agreements until 14 months later, well beyond the Idaho Commission's statutory 21-day window during which parties can file petitions for reconsideration and the 42-day period during which parties can appeal to the Idaho Supreme Court.

"Historically FERC has allowed the parties in such a dispute to resolve their differences either through settlement or litigation between the parties themselves," Jones said. "FERC's decisions here seem to ignore its own longstanding practice."

FERC alleges the Idaho PUC is not complying with the federal Public Utility Regulatory Policies Act (PURPA) that requires utilities to enter into sales agreements with small renewable power developers at rates determined by state commissions.

In November 2010, Idaho's three largest electric utilities filed a petition to the Idaho commission asking that the size of the projects that qualify for published rates be lowered and the price the commission sets be investigated. The utilities said they were buying power they did not need at prices that were too high for their customers.

Idaho Power has 104 active PURPA contracts generating 783 megawatts. Idaho Power's average total system load is about 1,800 MW, meaning about 43 percent is PURPA generation. Meanwhile, PURPA developers are requesting contracts for another 188 MW and another 212 MW are in dispute or litigation, according to Idaho Power. The

utility's customers have paid \$1.2 billion for PURPA projects under contract and the utility's obligations for future payments on existing contracts is another \$2.4 billion, Idaho Power claims.

In December 2010, the Idaho PUC lowered the size cap under which projects could qualify for the commission's published rates, from 10 average megawatts to 100 kilowatts. The obligation under PURPA for utilities to buy from qualifying projects larger than 100 kW remains, but the projects must negotiate a rate with the utility under a formula approved by the commission. Much of the 576 MW of wind energy Idaho Power buys is from wind projects developed by large-scale developers who positioned several 10 MW projects a mile apart (the FERC minimum) to qualify for the commission's published rates.

In June 2011, the Idaho commission denied approval of several wind projects, including Murphy Flats and Grouse Creek. The commission expressed concern about customers being "forced to pay for resources at an inflated rate and, potentially, before the energy is actually needed by the utility to serve its customers."

In an earlier FERC order stating its intent to pursue legal action against the Idaho PUC in the Murphy Flats case, FERC Commissioner Tony Clark dissented, writing, "More broadly, while PURPA was designed as a foot in the door for emerging renewable resources and small generators, I sympathize with concerns that PURPA is increasingly being used as a cudgel that would force consumers to bear undue burdens. ... (FERC) has now put itself in an awkward position. It will invoke the power of the federal government to proactively champion a private interest that may contradict the best interests of the consumers of a state."

NARUC's Jones said the states and the federal government have been able to work out their disagreements without court action. "For the better part of the last ten years, FERC and the states have worked well on several issues ... Given the challenges the utility sector is facing, FERC and the states should be working as cooperatively as possible. We understand there will be times when we disagree, but it is not at all apparent what FERC intends to achieve by taking a single state to federal court, particularly when other options are available."

The proposed Grouse Creek agreements were two 10 aMW projects near Lynn, Utah. The cost of the contract was \$230 million over 20 years. The three 10 aMW Murphy Flats projects in Owyhee County were for \$299 million over 20 years.

Here is a link to the NARUC statement:

<http://www.naruc.org/News/default.cfm?pr=366>

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